2. Global organizing and domestic constraints

Ashwini Sukthankar

1. INTRODUCTION

There is a long history of trade unions operating across borders. While the nature of the international engagement has varied over time, both in degree and type, for many decades the 'international' work of many trade unions, in the North and South, was limited to attending meetings convened by the International Labour Organization (ILO) or Global Union Federations (GUFs), writing occasional letters of support or protest at the request of a sister union facing state or employer repression, and attending the congresses of those sister unions, in a largely ceremonial capacity. Of course, there were instances of more militant cross-border solidarity, as well as of total national isolation, with some of the variation determined by resources. Since unions in the Global South have generally not had the same capacity to travel, or to employ a dedicated 'international affairs' staff person, their global work – especially during the Cold War – often depended on their political allegiances, and the willingness of a patron elsewhere to fund their participation. The expansion of a more global economy began to rewrite these expectations, and both at the level of discourse and reality, trade unions explored a more radical internationalism. This chapter looks at a period where unions' global engagement reached a peak, between about 2004 and 2008, only to be scaled back dramatically when companies and states mobilized to contain them. Ironically, the backlash to global organizing projects, launched precisely because state protections for workers were eroding, took place at the level of national laws and national legal institutions. And the disciplining of labour's international ambitions took place outside the framework of labour law. This chapter maps core elements of unions' global activity as well as the backlash, and explores the implications for the future.

This must be prefaced with brief caveats. First, this chapter relies heavily on my own involvement in unions' global campaigns during this period, and so there is an emphasis on the sites I know best, the United States (US) and India, as vantage points. Second, there is some risk of overstating the global aspects of union activity during this period. After all, this was a time where unions, particularly in the US, were urgently exploring new forms of organizing in general. Even if the 'global' is accepted as a partial framework for understanding these new mobilizations around a transformed economy, these union campaigns cannot be disentangled from the broader civil society focus on corporate malfeasance on a multinational scale during this period, addressing not only the impacts on workers, but on whole communities facing violence, land grabs, and environmental devastation. Also, law does not fully account for the obstacles faced by unions and workers seeking to act across borders: there are differences in organizational culture, political context, and industrial relations environments. The difficulty in trying to reconcile these differences – the high-conflict US industrial

relations model, the emphasis on cooperation and codetermination in Europe, the multiplicity of unions and their allegiances to political parties in South Asia – contributed to the perception that goals simply could not be aligned in the ways initially envisioned. Then, there were issues of resources. The global economic crisis certainly played a part in reigning in unions' global hopes, and in the US, struggles within the domestic labour movement among several prominent unions, beginning in 2008,[1] siphoned both financial and human resources away from a global focus.

2. INTERNATIONAL ASPIRATIONS MEET NATIONAL OBSTACLES

James Atleson addressed an early encounter between labour's aspiration to internationalism and hard, domestic legal realities in *The Voyage of the Neptune Jade*, tracing the 1997 journey of a cargo ship loaded by scabs during a dockworkers' strike in Liverpool; in port after port around the world, dockworkers acting in solidarity refused to unload the ship.[2] As he notes, the solidarity was illegal under the labour laws of each of those countries, which severely restricted secondary and sympathetic action. (p.393) Atleson's analysis of how and why 'national legal rules often create serious obstacles to expressions of transnational labour solidarity' (p.379) anticipates the legal constraints on global unionism that were to come, though it assumes that the primary site of struggle would be *labour* law. Atleson's approach to these domestic constraints is, ultimately, that they are transcended by the body of international conventions and documents guaranteeing the right to engage in transnational solidarity action. With its animating conviction in the utility of linking transnational solidarity to international standards, and its belief that labour rights possess a stature above domestic regulation, Atleson's piece, published in 2004, captures the spirit of the age when it appeared.

This was a period where unionists and their supporters expressed tremendous optimism about the potential for global labour organizing, informed at least in part by disappointment in the dwindling relevance of the state.[3] At the global level, the GUFs and their national affiliates pushed for multinationals to enter into global framework agreements (GFAs) that would, it was hoped, promote organizing rights throughout these companies' global operations and supply chains.[4] In January 2007, the GUFs also

---

[1] STEVE EARLY, THE CIVIL WARS IN U.S. LABOR (2011).

[2] James Atleson, The voyage of the *Neptune Jade*: Transnational labor solidarity and the obstacles of domestic law, in LABOUR LAW IN AN ERA OF GLOBALIZATION: TRANSFORMATIVE PRACTICES AND POSSIBILITIES (Joanne Conaghan, Richard Michael Fishl & Karl Klare, eds. 2004), 378.

[3] To take just one example, in a 2007 article, a core strategist within the US union SEIU wrote: 'At no time in history has there been a greater urgency or opportunity to form real global unions whose goal is to organize tens of millions of workers to win economic and social justice by counterbalancing global corporations on the world stage even as the power of the state declines.' Stephen Lerner, Global Unions: A Solution to Labor's Worldwide Decline, 16(1) NEW LABOR FORUM 23–37, at 23 (Winter 2007):

[4] In 2005 18 such agreements were signed and I 2008 14, compared to four in the year 2000, and three in 2013. Mark Schneider, 'International Labor Law: Opportunity, Solution, or

convened a coordinating council to promote global cooperation; in December of that year, this council sponsored a conference, 'Going Global: Organizing, Recognition and Union Rights,' bringing together more than 200 union leaders. This was only one among over a dozen such international meetings, organized by unions and their allies.

The interest in global organizing was closely tied to renewed interest in global standards, and transnational means of enforcing them. In part, this was about unions' perception that global organizing would have to transcend national labour law, as Atleson suggested, and develop a distinct vocabulary and regulatory framework. The slogan of 'labour rights are human rights' was one element of this, and analyses of corporate conduct focused on human rights standards rather than primarily on compliance with national law became a part of the standard repertoire of unions and their allies in this period. Union investment in global standards and their enforcement was also highly visible in the context of the mandate of John Ruggie, the United Nations Special Representative on Business and Human Rights from 2005 to 2011. Unions participated extensively in consultations connected to his mandate, hoping to breathe new life into complaints processes associated with the OECD Guidelines for Multinational Enterprises,[5] labour rights protections in trade agreements, or the ILO.

But the state, for all of its thinness and weakness, reasserted itself. Against all expectations, national law and institutions emerged as significant obstacles to labour's international goals. It is important to note that some of the backlash to global standards and/ or global engagement happened in the labour law contexts envisaged by Atleson. A couple of brief examples help illustrate this.

In 2010 I was involved in research on Fair Trade-certified tea plantations in India. The research was partly sponsored by the International Union of Foodworkers, which hoped to understand whether fair trade had truly improved workers' and trade union rights. We quickly realized that a basic element of the fair trade standards – the requirement that employers pay a living wage – was not even contemplated, let alone implemented. Furthermore, employers and the government had a legal defence. They argued that wages on the plantations were set through tripartite bargaining between the employers' association, the unions, and the state labour department – and if any employers were to pay *more* than agreed to, this would constitute an unfair labour practice. Efforts to apply universal 'living wage' principles have encountered national law obstacles in other countries as well, including Indonesia, Kenya and El Salvador.

Another example involves the efforts of unions to develop a coordinated global strategy to organize contractors such as the food service giant Sodexo, or the security services company G4S. In a 2008 article outlining concerns with these global campaigns, Martin Smith of the GMB union in the United Kingdom (UK) argued that they often failed to account for variations among national labour law frameworks. He noted that the very strategy of organizing outsourced workers as employees of the contractor rather than of the client company ran counter to the body of law created across Europe by an EU directive related to job security – in the UK, for example, the Transfer of Undertakings (Protection of Employment) Regulations guarantee continuity

---

Intrusion?' 2013 Symposium, October 25, 2013 http://www.minnesotalawreview.org/wp-content/uploads/2013/10/Schneider-MN-Law-Rev-Symposium.pdf

[5] See also Thouvenin, Ch 27 in this volume.

of employment for workers at any given site, even as contractors may come and go.[6] The critique was echoed by some unionists in India, who pointed out that the organizing strategy reified the phenomenon of contract labour, when India's legislative framework, in intent if not in application, was oriented toward limiting or abolishing it.

International and regional legal spaces were also becoming sites of contention. Much has been written about a series of cases at the European Court of Justice, constraining unions' right to take collective action to protect their interests, given conflicts with other provisions of EU law.[7] *Viking*, the first to come before the court, in 2007, involved a union call for a global boycott.[8] The case involved a ship once registered in Finland which had chosen to 'reflag' itself as Estonian, in order to employ Estonians on lower wages. At the request of its Finnish affiliate, the GUF representing workers in this sector, the International Transport Workers Federation, urged its affiliates around the world to boycott Viking. The European Court of Justice found that the threatened industrial action was in conflict with a provision in the Treaty on the Functioning of the European Union related to freedom of establishment, which guarantees that companies or individuals from any member state may locate themselves in another member state and receive equal treatment (para. 69).[9]

These examples notwithstanding, the main thrust of the backlash against labour's internationalism took place within domestic legal contexts outside the established battleground of labour law. To illustrate this, it is necessary to map the terrain of global engagement during the five-year period when these efforts were at their height, and examine some of the areas of conflict.

3. CIVIL LITIGATION COUNTERS UNION ORGANIZING

From the perspective of US unions, the death blow for global campaigns as they were conceptualized at the time was a volley of civil litigation. In this case, beginning at the end allows us some insight into why the global strategies employed by labour might have been seen by companies as such a threat, and why national courts might have chosen to agree.

Beginning in 2007, US unions involved in global organizing campaigns targeting particular multinational corporations found themselves facing a spate of civil suits filed by those corporations, under the Racketeer Influenced and Corrupt Organizations Act (RICO).[10] This legislation was originally enacted in 1970 to tackle concerted criminal

---

[6] Martin Smith, A Critical Look at Global Strategic Campaigns, 15(3) INTERNATIONAL UNION RIGHTS 8–9, (2008).

[7] See e.g. Andreas Bücker & Wiebke Warneck, Viking – Laval – Rüffert: Consequences and Policy Perspectives, ETUI (2010).

[8] *International Transport Workers' Federation and Finnish Seamen's Union v. Viking Line ABP and OÜ Viking Line Eesti*, Case C-438/05, 11 December 2007.

[9] See also Novitz, Ch 34 and Zimmer, Ch 13 in this volume.

[10] *Smithfield Foods v. United Food and Commercial Workers and others* (filed in Federal Court for the Eastern District of Virginia, 17 October 2007); *Wackenhut Corporation v. Service Employees International Union and others* (filed in Federal Court for the Southern District of New York, 1 November 2007); *Cintas Corporation v. UNITE HERE and others* (filed in Federal

activity, and its stated goals included freeing organized labour from the grip of organized crime, by targeting patterns of illegal activity such as bribes to union officials, or embezzlement from union funds. Now, however, it was being repurposed as a tool to challenge unions' global campaigns, with corporations citing the broad global alliances and the aggressive demands that characterized these campaigns as evidence of conspiracy, in the first instance, and extortion, in the second.

It would be a mistake to overstate the plaintiff companies' focus on the global nature of these campaigns, distinct of other dimensions. In each case, the companies were primarily concerned with challenging new forms of organizing within the US, undertaken to deal with the new climate for unions. They attacked global organizing – and unions' demand for a global framework agreement – because it was as a part of this larger suspect strategy. The nature of the union strategy was, essentially, to organize *outside* the framework of the National Labor Relations Act (NLRA), in two key respects. First, unions were demanding recognition through 'card check' to demonstrate majority representation, in order to avoid elections overseen by the National Labor Relations Board – a process which many unions deem to be broken. Second, they were trying to develop innovative ways to deal with obstacles such as the classification of workers as independent contractors, or the proliferation of outsourcing. For example, the Service Employees International Union (SEIU) had begun to address the fragmented multiplicity of miniscule cleaning units within workplaces that was created by outsourcing, by pushing to aggregate the outsourced cleaners, across workplaces, into a single bargaining unit. In the RICO complaint filed by Sodexo against the SEIU in 2011, the company attacked this strategy as something that 'the union could never achieve for itself under NLRB rules.'[11] According to the company, this contributed to 'a pattern of "extortion" prohibited by RICO.'[12] From the perspective of courts, it is important to note that they have typically not allowed RICO complaints to proceed where the domestic labour law framework governs, arguing pre-emption. For example, in a 2001 decision, the court determined that the majority of the predicate acts cited by the company Overnite Transport in its complaint against the Teamsters – such as written and verbal threats – was '"garden variety" conduct accompanying labour disputes [falling] within the exclusive jurisdiction of the NLRA,'[13] that is to say, an unfair labour practice rather than racketeering. But in the case of Sodexo, and the other global campaigns of the period, the NLRA did not, in fact, govern the union activity in question. The SEIU's motion to dismiss was denied, and, given the sheer expense of trying to defend such a lawsuit, the union chose to settle, and to end its campaign.

To the extent that the companies filing these lawsuits cited global organizing and global partnerships in their RICO complaints, they were targeting the macro version of strategies that they already deemed illegitimate at the local level. The idea of addressing in one global agreement the demands of hundreds of thousands of workers,

---

Court for the Southern District of New York, 5 March 2008), *Sodexo v. SEIU and others* (filed in the Federal Court for the Eastern District of Virginia, 17 March 2011).

[11] Complaint in *Sodexo v. SEIU*, p. 29.

[12] Ibid.

[13] *Overnite Transportation Co. v. International Brotherhood of Teamsters*, 168 F.Supp 2d 826 at 838.

scattered around the globe, was outrageous only for the same reasons that the radically new bargaining unit proposed by the SEIU prompted outrage. And, as noted, from the perspective of the court, the new global organizing terrain, like the process of voluntary recognition through 'card check' within the US, had no enabling framework in labour law. Where labour relations are unregulated by the state, it is easy to treat them as criminal, as Harry Arthurs has suggested.[14]

Several of the campaigns mentioned above not only originated in the US but had almost purely US-focused goals. However, they were contained within a much broader understanding of 'global organizing' or 'global engagement.' It is not possible to capture the full range of what was understood to constitute global organizing at the time, within the confines of this chapter, but an analysis of two critical elements, cross-border mergers and GFAs, as they played out in this period, should help convey both the ambition and the ways in which it was tamed.

The holy grail of global organizing is, naturally, a true global union. This does not mean the current system of global union federations, which affiliate existing national unions by sector, or the international confederations, which convene national federations. A true global union is also something more than company-specific international organizing networks. The vision of global unionism, as Dan Gallin has described it, is 'no longer to "cooperate beyond borders" but to create integrated, borderless organizations.'[15] The aspiration toward global unions has been driven as much by the pragmatic desire to combine shrinking resources and merge dwindling memberships, as the idealistic vision of an alternative or an answer to corporate-led globalization.

The United Steelworkers in the US and Unite, the Union in the UK, probably came the closest to implementing such an organization in 2008. While unions that straddle the US and Canada are relatively commonplace, and there have been some European-level mergers, as described below, there had been no previous attempt to establish a transatlantic entity, with the ambition of growing still bigger. 'The long-term vision,' the soon-to-be joint entity announced on its website, 'is to create one union to protect workers against exploitation world-wide.' The new entity, Workers Uniting, acknowledged the obstacles, including 'the diverse political and legal frameworks that different groups operate within,' but asserted that an organization structured to enable local responses to local issues could overcome them. Besides, it was noted, local variations were diminishing: 'political and economic conditions are homogenising because of the power and influence of multinationals.'[16]

A full merger did not materialize. Conversations with individuals connected to the two unions indicate that legal barriers clearly contributed – or at a minimum, that a range of concerns, including the political and cultural, were articulated as legal. The unions had recognized that they would have to negotiate the differences between their two legal contexts, but had not thoroughly anticipated that their respective domestic

---

[14] Harry Arthurs, Labour Law Without the State, 46 UNIVERSITY OF TORONTO LAW JOURNAL 1 (1996).

[15] Dan Gallin, Labour as a Global Social Force, in GLOBAL UNIONS? THEORY AND STRATEGIES OF ORGANIZED LABOUR IN THE GLOBAL POLITICAL ECONOMY (Jeffrey Harrod & Robert O'Brien, eds, 2002).

[16] http://www.workersuniting.org/common/vision.

systems would each attempt to control the scope of the cross-border relationship. Truly shared governance structures and finances, joint elections for officers, and the prospect of agreements that could be negotiated and enforced in both countries, appeared difficult in practice. The obstacles were not, cleanly, within the realm of labour law. National law's regulation of foreign currency transfers, for example, is not about labour law, but it implicates the transfer of dues, access to an organizing or strike fund, and many other routine union transactions.

Thus, the era of the cross border trade union merger, which John Gennard described in 2009 as a potentially 'new emerging trend,'[17] has not been fully realized. European-level mergers have also encountered obstacles whose legal dimension remains unexplored. So, while there exists an excellent analysis of Nautilus International, a union established in 2009 after a decade of negotiations to bring together European seafarers,[18] the description of the obstacles that had to be, and still have to be, addressed, does not address the legal. For example, the question of whether officers and ordinary seamen can be in the same union is addressed as an issue of institutional culture (p.178) but not of law, though of course, these are issues with which national labour laws were deeply concerned.

4. GLOBAL FRAMEWORK AGREEMENTS: UNFULFILLED PROMISE

The global framework agreement (GFA; also called an International Framework Agreement or IFA)[19] is a much more modest means of trying to align the goals and activities of unions across borders. In the first place, its reach is limited to a single multinational corporation. The GFA has its origins in the corporate code of conduct, which is a unilateral statement by businesses of their ethical vision, throughout global operations and supply chains. GFAs reflect the subsequent effort by global union federations to use high-level negotiations with multinational corporations to shift the focus of corporate social responsibility away from relatively uncontentious but intractable issues such as forced labour and child labour, where labour-management dialogue had a limited role to play, toward concerns where global coordination and dispute resolution might be more effective. Trade union rights were obviously central to this conception.

In the initial period of GFAs – a small handful were signed in the late 1980s and through the 1990s – the degree of negotiation involved in framing the *content* was nominal at best. They were primarily symbolic of the underlying commitment of the parties – the corporation and the global union federation – to resolve problems through regular meetings and high-level dialogue. But, as interest in the potential tools of global

[17] John Gennard, A New Emerging Trend? Cross-border Trade Union Mergers, 31(1) EMPLOYEE RELATIONS, 5–8 (2009).

[18] Victor Gekara Oyaro, Iris L. Acejo & Helen Sampson, Re-imagining Global Union Representation Under Globalisation: A Case of Seafaring Labour and the Nautilus International Cross-border Merger, 4(3) GLOBAL LABOUR JOURNAL 167–85 (2013).

[19] See also Drouin Ch 15 in this volume.

organizing intensified, global union federations and their affiliates invested heavily in campaigns to force multinational corporations to enter into more nuanced agreements that would address the specific gaps in domestic law that inhibited union rights. (This investment, as noted above, is reflected in the spike in the numbers of agreements signed in the mid 2000s.) The most significant gaps in domestic law, from many national vantage points, included the degree to which employers were entitled to interfere in workers' choice to form and join a union, and/or to refuse to recognize and negotiate with a union.

A range of bodies interested in global governance were convinced that global agreements were on the cusp of addressing wages and other terms and conditions of employment that had remained beyond the reach of standard corporate responsibility tools. The ILO's Multinational Enterprises Programme further expressed the conviction that GFAs would soon have an impact on the supply chain.[20]

Global agreements have still not produced noticeable traction on any of these issues. Unions, trying to utilize the provisions of the agreements in real-life disputes, have confronted with a set of open questions. Who is entitled to demand compliance with the provisions of a GFA, from whom, and in what forum? And how are the standards to be interpreted and applied? While I do not know of any litigation thus far that is directly connected to these agreements, domestic law is deeply implicated. This is the case even though, as Isabelle Schömann has pointed out, GFAs have developed without articulating any clear relationship to law – domestic or international, public or private.[21] The ambivalence toward law and legal enforcement reflects GFAs' roots in 'soft law' codes of conduct, but many unions had expected them to perform as though they were enforceable contracts.

Rudiger Krause, writing about the possibility for enforcement of a GFA in German courts, exposes some of the inherent obstacles. In the first place, if such an agreement were understood as a contract, a crucial barrier for courts would be that the GUF enjoys no explicit mandate from its affiliates for the negotiation or conclusion of such a contract. A GUF is not a legal entity with the power to speak for and bind its constituent parts.[22] While Krause restricts the analysis to Germany, it would seem to apply to most jurisdictions.

The applicability of a GFA to a signatory corporation's subsidiaries and supply chains is another open question. With respect to suppliers, Ludger Pries and Martin

---

[20] International Framework Agreements: a global tool for supporting rights at work, interview with Dominique Michel of ILO Multinational Enterprises Programme, 31 January 2007, available at http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_080723/lang–en/index.htm.

[21] Isabelle Schömann, Transnational Collective Bargaining: In Search of a Legal Framework, in TRANSNATIONAL COLLECTIVE BARGAINING AT COMPANY LEVEL: A NEW COMPONENT OF EUROPEAN INDUSTRIAL RELATIONS? (Isabelle Schömann, Romuald Jagodzinski, Guido Boni, Stefan Clauwaert, Vera Glassner and Teun Jaspers) Brussels: ETUI, 2012, 219–32) at 226.

[22] Rudiger Krause, International Framework Agreements as Instrument for the Legal Enforcement of Freedom of Association and Collective Bargaining? The German Case, 33 COMPARATIVE LABOR LAW & POLICY JOURNAL 749 (Summer 2012).

Seeliger indicate that the *language* of supply chain responsibility,[23] at least, has taken firm root in global agreements, quoting research showing that, as of 2013, '46 percent of existing IFAs inform suppliers and encourage them to adhere to the content of the IFA. Moreover, 14 percent take measures to assure supplier compliance and another 9 percent even assume responsibility for the entire supply chain.'[24] However, a 2013 report by Michael Fichter and Dimitri Stevis assessing the impact of global agreements in the US concludes that, in practice, most subsidiaries, subcontractors and suppliers remain resolutely opposed to the idea that the terms of a GFA apply to them, arguing that they did not agree to be bound.[25]

Perhaps the issue that has played out most extensively – again, in the shadow of national institutions, rather than within them – is the appropriate interpretation of the standards on trade union rights that are a central piece of these agreements. In determining whether a violation has occurred, and how to fix it, is the relevant jurisprudence that which has emerged from the ILO, through the Committee on Freedom of Association, or from domestic courts? The dilemmas are, perhaps, best appreciated through a concrete example.

Owen Herrnstadt narrates the course of events at a Siemens facility in the US, where workers attempted to organize in 2012, counting on the language related to freedom of association in the GFA that the company had just signed with the GUF for the sector, IndustriALL. However, they faced an aggressive anti-union campaign. The communication from IndustriALL's General Secretary to Siemens:

> referenced language in the IFA concerning the company's acknowledgement of the rights of employees to form labor unions […] and provisions regarding the need for Siemens to honor higher standards when it operates in a country that does not reflect the principles of freedom of association.

However, Siemens insisted that the GFA required nothing more than compliance with US law.[26] This could be considered merely a reprise of some of the earliest critiques of corporate labour policy in the context of globalization: that, no matter what other areas of corporate practice may be standardized across borders, labour regulations are, ultimately, treated as a local matter. Here, however, the issue is slightly different: domestic law serving as a riposte to international standards.

So, as several experts and GUF leaders agree, if these contradictions are to be resolved, and corporations are to be forced to accept global standards for trade union rights, applicable throughout the world, and throughout the system of suppliers,

---

[23] See also Kolben, Ch 25 and Trebilcock, Ch 6 in this volume.

[24] Ludger Pries and Martin Seeliger, Work and Employment Relations in a Globalized World: The Emerging Texture of Transnational Labour Regulation, 4(1) GLOBAL LABOUR JOURNAL 26–47, 36 (Jan. 2013).

[25] MICHAEL FICHTER AND DIMITRIS STEVIS, GLOBAL FRAMEWORK AGREEMENTS IN A UNION-HOSTILE ENVIRONMENT: THE CASE OF THE USA, Friedrich Ebert Stiftung (November 2013).

[26] Owen E. Herrnstadt, Corporate Social Responsibility, International Framework Agreements and Changing Corporate Behavior in the Global Workplace, 3 AMERICAN UNIVERSITY LABOR & EMPLOYMENT LAW FORUM 263 at 272 (Winter 2013).

subcontractors, subsidiaries, franchises and other business partners, then GFAs will have to be reconceived, and implemented *through* national laws, rather than in spite of them. Schömann, for example, notes that agreements will have be signed in each of the different countries where the company operates (p.228). (Although, of course, these agreements will not be standard collective bargaining agreements, one could speculate that a third-party beneficiary status could be carved out for workers, giving them standing to press their employer to comply with the provisions.) In addition, GUFs would have to demand that provisions in global agreements be included in all of a company's commercial contracts – franchise agreements, management contracts, sourcing arrangements and licensing deals (p.228).[27]

5. MOBILIZATION AND RESISTANCE IN THE GLOBAL SOUTH

The analysis above is heavily focused on actors in the Global North, and activity that, while international in scope, originated in struggles there. The story that concludes this reflection, and tries to touch on some additional, crucial aspects of global organizing and its domestic regulation, is told from the perspective of a mobilization in the Global South.

In 2005, the Garment and Textile Workers Union (GATWU) in Bangalore, India was struggling to organize and support workers at a large factory, Fibres and Fabrics International (FFI), producing for an export market. The union, together with the national federation to which it is affiliated, the New Trade Union Initiative (NTUI), reached out to the Clean Clothes Campaign (CCC), a European activist network focused on labour rights in the global garment industry. The ensuing events, where Indian legal and political institutions fought back against the union's efforts to internationalize the issues, are another indicator that the standard formulation – that globalization has meant the erosion of the state's regulatory powers – is too facile. The story of FFI is, as Prabhir Vishnu Poruthiyil put it in his own analysis of the case, a cautionary tale of 'the glaring limitations of cosmopolitan institutions and the continuing, if not increased, significance of the repertoires of nationalism.'[28]

At the behest of GATWU, a group of local activists conducted an investigation of conditions at FFI. The report, issued in August 2006 in partnership with the CCC and the India Committee of the Netherlands (ICN),[29] included findings that managers had beaten workers with sticks, kicked them and abused them verbally, and engaged in widespread practices of unpaid overtime and arbitrary dismissals. (p.3) Management's response – included in the report – included broad denials (p.10), and the allegation that the entire campaign had been 'stage-managed' by GATWU to secure union

---

[27] See also Martin, Ch 2 in this volume.

[28] Prabhir Vishnu Poruthiyil, Crouching Standards, Hidden Morals: A choreographed National Rebuttal of Cosmopolitan Designs, JOURNAL OF BUSINESS ANTHROPOLOGY, Case Study #4, 20 (Spring 2013).

[29] Fact Finding Report of Violation of the Rights of Workers at Washing Unit of Fibre & Fabrics International Pvt. Ltd. (FFI), Peenya Industrial Area, Bangalore, draft report 18-05-2006; final report 24-8-2006.

recognition (pp.11–12). The report also chose to link the violations to established discourses of supply chain accountability and multinational corporate actors, focusing in particular on FFI's most significant customer, the Dutch brand G-Star. Prior to the release of the report, on 28 July 2006, the company sought and received an injunction in the City Civil Court in Bangalore, prohibiting the local groups from discussion of the alleged violations. Following the release of the report, the company moved an application for contempt of court.

GATWU and its allies continued to press the issue in global space, and against FFI's multinational client in particular. In October 2006, the CCC submitted a complaint under the OECD Guidelines for Multinational Enterprises, to the National Contact Point (NCP) in the Netherlands, against G-Star.[30] But the NCP's efforts to address the complaint in a way that was responsive to the domestic nuances were substantially constrained by the injunction issued by the Bangalore Civil Court. As the Dutch Ministry of Economic Affairs (which houses the NCP) noted in a press release, 'a mediation process involving all parties concerned proved to be next to impossible because local authorities had banned certain relevant parties in India from speaking in public about the issue.'[31]

The Indian state refused to be distracted by the fact that the complaint, and connected protests organized by the CCC, targeted G-Star rather than Indian entities. A range of Indian state actors mobilized, beginning to build a case that the activists' investigation and report was not about the defence of workers' rights, but rather a libellous and malicious intervention, undertaken without any coordination with the state (the appropriate protector of its citizens), or respect for national law. The motive, they argued, was protectionism: the Dutch activists simply wanted to urge European consumers, brands and governments to reject Indian products. While the state may have referenced labour law in a cursory manner, as indicated below, the efforts to dismantle the global support network continued to rely on the legal discourses related to defamation and unfair trade practices.

First to act was the Department of Labour of the Government of Karnataka, which conducted its own inspection of FFI in December 2006,[32] and determined that the civil society groups' report was 'aiming at tarnishing the image of the company with a malafide intention,' and was 'malicious and […] not based on facts and reality.' (p.2) The Department of Labour praised the injunction issued by the Civil Court, prohibiting the domestic groups from sending any further information to 'foreign organisations,' arguing that: 'The primary intention of these organisations [is] to cause bad reputation for this company [FFI] with G-Star's company which is the main purchaser so that […] in the European markets there will not be any demand.' (pp.12–13)

---

[30] Letter 11 October 2006 to Wim van der Leeuw (Ministry of Economic Affairs, Netherlands National Contact Point for the OECD Guidelines).

[31] Lodewijk de Waal, National Contact Point for the OECD Guidelines, The Hague, 18 March 2008. Statement of the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) regarding the specific instance of the Schone Kleren Kampagne (Dutch Clean Clothes Campaign, SKK) and Landelijke India Werkgroep (India Committee of the Netherlands, LIW) concerning G-Star International BV's supply chain.

[32] Government of Karnataka Department of Labour report of 26 December 2006 (D.O. No LD 84 CLC 2006).

The following month – January 2007 – the Indian Embassy in the Netherlands sent a letter requesting that the CCC and ICN remove the FFI campaign materials from their websites, and demanding that the groups cease their interference with the Indian legal system. In February, the company filed a criminal complaint against the CCC, the ICN, and their internet service providers, resulting in a summons to appear before the judge on charges of criminal defamation under the Indian Penal Code Articles 499 and 500. The complaint also emphasized that the civil society fact-finding group had no statutory authority (unlike the state government's labour inspectorate, which had reported that there were no violations at FFI), and that the trade union, GATWU, had not been recognized by the government.[33] Thus, the company alleged, the entire campaign had been orchestrated 'for object of getting GATWU to be recognized as a Union by the Complainant company through back-door and underhanded means.' (para. 25)

The company's argument regarding the illegitimacy of the global campaign was pressed from multiple angles in the complaint. It stated that the activists' plan 'to undermine the judicial process and administration of justice in India and the functioning of the courts in India' was not only to secure union recognition while side-stepping national law, but also about 'insulting and tarnishing the image of the country with the sole aim of banning goods made in India thus resorting to unfair trade practices banned by the WTO and GATT.' (para. 34) Global labour campaigns were thus not only in violation of national law, but international law. The complaint also referenced provisions of a 2003 Council of Europe instrument to which the Netherlands is a signatory, the Additional Protocol to the Convention on Cybercrime, dealing with 'acts of a racist and xenophobic nature committed through computer systems.' (para. 41) Again, without suggesting that the Indian court could adjudicate the Netherlands' compliance with its treaty obligations, the complaint appealed to Indian nationalist sentiment on yet another level.

On the day that the case was to be heard, in June 2007, the Dutch activists did not appear in court. The judge contemplated an arrest warrant, and then issued one in September 2007 when again they failed to appear. The implication that the Dutch activists did not respect the Indian legal system, and that they did not believe that they could receive a fair trial in India, was cleverly mobilized by the company.

In October 2007, then-Minister of Commerce Kamal Nath confronted a Dutch delegation, including the queen, amplifying the arguments about violations of trade norms. He claimed, essentially, that since the Dutch government was funding the work of the CCC and the ICN, and the NGOs' work was designed to reduce Indian imports, the Dutch government was subsidizing Dutch garment manufacturers,[34] and erecting non-tariff barriers to trade. In an interview I conducted with Nath, he alleged that the Dutch government was engaged in 'disguised protectionism,' and promised countervailing duties on Dutch imports into India.[35]

---

[33] In the Court of the 7th Additional Chief Metropolitan Judge at Bangalore, Complaint CC No. 11593/2007 (09/02/2007).

[34] Salil Tripathi, India's Small Workforce, NEW STATESMAN, 29 November 2007, available at http://www.newstatesman.com/society/2007/11/child-labour-india-dutch-ccc.

[35] Interview with Kamal Nath, New Delhi, 23 December 2007.

In November 2007, upon the request of the Dutch NCP, Ruud Lubbers, a former Prime Minister of the Netherlands and then a Minister of State, agreed to mediate the dispute, and ultimately brokered a settlement in January 2008. The CCC's press release, issued in January 2008, is essentially a capitulation, acknowledging the adequacy of Indian law and Indian public institutions going forward.[36]

An interview with two individuals who were on staff at the Indian office of Hivos, the Dutch bilateral funder at the time, introduces another connected site of backlash. Hivos had long supported independent trade unionism in India, including through CWM, an Indian NGO closely associated with GATWU, and found itself on the defensive, both from attacks in the Netherlands and in India. In the Netherlands, politicians asked why India – a country that claimed to have the political will and institutional capacity to fully protect the rights of its citizens, including workers – should need Dutch development assistance at all. In India, the accounts of Hivos grantees who had supported GATWU were scrutinized aggressively, and they were threatened with termination of their registration under the Foreign Currency Regulation Act, which enabled them to receive funding from overseas. In the same interview cited above, then-Minister of Commerce Kamal Nath indicated that he would press foreign donors to comply with the Paris Declaration on Aid Effectiveness, which urges greater harmonization and alignment with the development goals of receiving country governments. These goals, if not in obvious conflict with national trade unions' global aspirations, were certainly in tension, especially where unions have an explicit critique of their countries' economic policies.

It should be noted briefly here that in the Global North, and particularly in Europe, national trade unions have long had a clearly demarcated role in the allocation and supervision of their governments' development assistance, and this work has been among the primary vehicles of their global engagement. Over the last few years, states have vitally reshaped the ways in which the unions can play their role. The story of FFI and GATWU provides one perspective into some of these shifts, but they went much further.

It is beyond the scope of this chapter to explore this issue in any detail,[37] but it is important to emphasize a few points. Bilateral developmental assistance programs are generally housed within a country's foreign affairs or state department, and the work is by its very nature vulnerable to even minor shifts in foreign policy, as indicated in the story of FFI and GATWU. These may include changing geographic and thematic points of focus, with a trade union in turn having to change the issues on which it works with a partner union, or even the partner itself. Governments may impose onerous conditions on development assistance, as former US president George W. Bush did when he required grantees to 'oppose prostitution,' placing unions whose organizing activities encompassed the sex sector in a difficult position. A few governments allow their unions to use funds to target the activities of multinational corporations headquartered

[36] Clean Clothes Campaign, Indian court cases against Dutch and Indian organizations withdrawn, 29 January 2008.

[37] For more information on this, see ITUC, Trade Union Development Cooperation Network, Trade unions' views on working with donor governments in the development sector: A review of 18 donor governments' support mechanisms (2012/4).

in that country – for example, to support transnational union networks within that company – but most explicitly prohibit it.

6. CHANGE IN UNION STRATEGIES

As far as I can tell, trade unions have not extensively analysed their efforts at cross-border engagement between 2004 and 2008, the backlash, or the implications for the future. But it is clear that strategies have changed sharply, becoming more attentive to domestic legal frameworks.

The approach of the Walmart campaign, initiated by the United Food and Commercial Workers International (UFCW) in the US, in partnership with the GUF for the retail sector, UNI, is a good example. In 2012, when India was taking steps to lift restrictions on foreign direct investment in multibrand retail – which had, until that point, kept out foreign 'big box' retailers such as Walmart – UNI developed a report for the Department of Industrial Policy and Promotion (DIPP), with specific recommendations drawn from other countries' experiences with Walmart. The report focused less on the company's treatment of retail workers around the world than on its sourcing practices, and UNI's recommendations urged that any shift in investment policy include protections for domestic manufacturing, agriculture, and small-scale trading and retail.[38] When DIPP issued the circular enabling FDI in the sector, it reflected the combination of domestic and international pressure.[39] In South Africa, where Walmart entered the country through its acquisition of the domestic chain Massmart, the global campaign focused its energies on the law and policy framework designed to protect competition. The demand that the Walmart-Massmart deal only be approved if stringent conditions were put in place was taken all the way to the Competition Appeal Court.[40]

Thus, it is not so much that unions have eschewed global engagement, but rather, that the approaches and claims are more modest than they were. Recent campaigns have avoided the global absolutism of human rights discourse in favour of more localized rights frameworks, and rather than attempting to override national institutions, they have sought to reinvigorate them. And – like the companies and states that acted to contain the earlier experiments in global labour strategy – unions have looked beyond the realm of labour law.

---

[38] UNI Global Union, Walmart's Global Track Record and the Implications for FDI in Multi-Brand Retail in India (March 2012).

[39] Department of Industrial Policy and Promotion, Review of the policy on Foreign Direct Investment allowing FDI in Multi-Brand Retail Trading," Press Note 5 (2012), available at http://dipp.nic.in/English/acts_rules/Press_Notes/pn5_2012.pdf

[40] Competition Tribunal of South Africa, Walmart and Massmart Merger, 110/CAC/June 11 and 111/CAC/June 11